

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:18-CV-00665-FDW-DCK

BARBARA THAXTON)
ANGELA MAYES,)
Individually, and on the behalf of all)
similarly situated current and former)
employees,)
Plaintiffs,)
v.)
BOJANGLES', INC.,)
BOJANGLES' RESTAURANTS,)
INCORPORATED,)
Defendants.)

THIS MATTER is before the Court on Parties' Joint Motion to Dismiss Unresponsive Opt-In Class Members. (Doc. No. 161).

This lawsuit involves a collective action brought under the Fair Labor Standards Act. Plaintiffs seek to recover unpaid overtime pay that they allege they were not paid due to Defendant's alleged misclassification of employees as exempt from the FLSA. (See generally Doc. No. 1). After conditional certification, over five hundred individuals opted into the action. (Doc. No. 161, p. 2). As part of discovery, Defendants served a set of discovery requests in the form of a questionnaire to all named and opt-in plaintiffs. Id. at 2. One hundred and eighty-eight opt-in Plaintiffs have not responded to this questionnaire, despite having several extensions and reminders from the parties' counsel. See id. at 2–3 (detailing attempts to contact unresponsive opt-in Plaintiffs).

Rule 37(d)(3) of the Federal Rules of Civil Procedure allows the Court to dismiss parties who fail to participate in discovery. See Fed. R. Civ. P. 37(d)(3) (referencing Rule 37(b)(2)(A)(i)-(vi) as appropriate sanctions). Therefore, Parties’ “Amended Motion to Dismiss Unresponsive Opt-in Class Members,” (Doc. No. 161), is GRANTED and the individuals specified in the motion are hereby DISMISSED from the case. (See Doc. No. 161, p. 3–11 (listing unresponsive opt-in Plaintiffs)). Parties are INSTRUCTED to mail or email a copy of this order and the underlying motion to dismissed individuals to inform them of their dismissal from the lawsuit.

IT IS SO ORDERED.

Signed: June 20, 2019


Frank D. Whitney
Chief United States District Judge